IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

OP.No. 12755 of 2001(R)

PETITIONER:

MANGALY TIMBER AND FURNITURE PET BOTTLE DIVISION, DHONI, PALAKKAD A FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER RAJAN M.MENON, PROJECT CONSULTANT HAVING ITS OFFICE AT BOC ROAD, KOPPAM AMSOM AND DESOM, PALAKKAD.

BY ADV. SRI.V.GIRI

RESPONDENTS:
----

1. **KERALA STATE ELECTRICITY BOARD REPRESENTED BY IT SECRETARY, VYDYUTHIBHAVANAM, PATTOM PALACE P.O., THIRUVANANTHAPURAM.**

2. **THE CHIEF ENGINEER (DISTRIBUTION)NORTH, KERALA STATE ELECTRICITY BOARD, KOZHIKODE.**

3. **THE DY.CHIEF ENGINEER, ELECTRICAL CIRCLE, PALAKKAD.**

4. **ASST.EXECUTIVE ENGINEER, ELECTRICAL MANJOR SECTION, KALPATHY, PALAKKAD.**

***ADDL.R5 IS IMPLEADED:**

R5. **THE SPECIAL OFFICER (REVENUE), KSEB, THIRUVANANTHAPURAM.**

(ADDL.R5 IS IMPLEADED AS PER ORDER DTD. 17/01/2007 IN I.A.NO.17259/2006)

BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
SRI.N.D.PREMACHANDRAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.12755/2001 R

ORDER ON C.M.P.NO.20255/2001 IN O.P.NO.12755/2001 R

DISMISSED

17/01/2007 **SD/-KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMUNICATION SENT BY THE ELECTRICAL CONTRACTOR DTD. 20/04/1998 TO THE ELECTRICAL INSPECTOR, PALAKKAD WITH COPY TO THE PETITIONER.**

EXT.P2: **COPY OF THE COMMUNICATION SENT BY THE ELECTRICAL INSPECTOR, PALAKKAD TO PETITIONER DTD. 5/05/1998.**

EXT.P3: **COPY OF THE PROCEEDINGS OF THE CHIEF ELECTRICAL INSPECTOR NO.B4-19287/98/CEI DTD. 9/07/1998.**

EXT.P4: **COPY OF THE PROCEEDINGS OF THE ELECTRICAL INSPECTOR, PALAKKAD NO.B3-3159/99/E1 DTD. 8/10/1998.**

EXT.P5: **COPY OF THE COMMUNICATION SENT BY THE PETITIONER DTD. 28/03/1998 TO THE ASST.EXECUTIVE ENGINEER.**

EXT.P6: **COPY OF COMMUNICATION SENT BY THE ELECTRICAL CONTRACTOR TO THE ELECTRICAL INSPECTOR DTD. 17/07/1998.**

EXT.P7: **COPY OF THE COMMUNICATION SENT BY THE PETITIONER TO THE ASST.EXECUTIVE ENGINEER DTD. 23/10/1998.**

EXT.P8: **COPY OF THE COMMUNICATION SENT BY THE PETITIONER TO THE ASST.EXECUTIVE ENGINEER DTD. 13/11/1998.**

EXT.P9: **COPY OF THE PROCEEDINGS OF THE DY.CHIEF ENGINEER NO. DB3/DHT/MANGALI/99/871 DTD. 27/07/1999.**

EXT.P10: **COPY OF THE BOARD ORDER NO.3225/98 DTD. 20/10/1998.**

EXT.P11: **COPY OF THE COMMUNICATION OF THE SPECIAL OFFICER REVENUE TO THE ASST. EXECUTIVE ENGINEER DTD. 12/10/1999.**

...2/-

EXT.P12: COPY OF THE COMMUNICATION SENT BY THE PETITIONER TO THE SECOND RESPONDENT DTD. 25/11/1999.

EXT.P13: COPY OF THE COMMUNICATION SENT BY THE PETITIONER TO THE 4TH RESPONDENT DTD. 27/10/1999.

EXT.P14: COPY OF THE STATEMENT SHOWING THE POWER CONSUMPTION FOR THE PERIOD FROM APRIL 1997 TO AUGUST 1999.

EXT.P15: COPY OF THE STATEMENT SHOWING REVISED BILL AMOUNT AT LT TARIFF AMOUNT REMITTED BY THE PETITIONER AND EXCESS COLLECTION.

/TRUE COPY/

Kss

KURIAN JOSEPH, J.

O.P.No. 12755 of 2001

Dated this the 17th day of January, 2007

JUDGMENT

The writ petition is filed with the following prayers:-

a) Issue a writ in the nature of certiorari quashing Ext.P9 in so far as the Dy. Chief Engineer has authorised sanction of conversion of the petitioner from deemed HT status to LT status only with effect from 1-8-1999 and not with reference to the date on which conversion has actually been effected by the petitioner as evidenced by Ext.P6.

b) Issue a writ in the nature of mandamus commanding the respondents to treat the petitioner as LT consumer with reference to the date of Ext.P6 and not to levy any penal charges as applicable to LT consumers for any period subsequent to the date of ext.P6.

c) Issue a writ in the nature of certiorari quashing Ext.P11 in so far as the Special Officer, Revenue had instructed the Asst. Executive Engineer, Kalpathy to issue revised bills on the petitioner at LT rates including levy of penal charges from February 1998 till August, 1999.

d) Issue a writ in the nature of mandamus commanding the respondents to refund to the petitioner the excess amount collected as detailed in Ext.P4 or in the alternative to adjust the said amounts against the future bills issued to the petitioner.

> e) Issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P11 in so far as the Special Officer (Revenue) has instructed the Assistant Executive Engineer, Kalpathy to issue revised bills on the petitioner imposing penalty on proportionate energy charges.

The simple issue on facts is that the petitioner was having a sanctioned load of 80 KW. According to the respondents, on inspection the load was found to be 113 KW. The inspection was conducted during November 1997. It is seen from Ext.P9 impugned order itself that the statutory authority, namely the Electrical Inspector, had accorded sanction for the energisation of one 100 KVA DG set and one 200 KVA DG set and approved drawings were also furnished. Despite that the 3rd respondent in the impugned Ext.P9 order stipulated that the change of tariff will come into effect only on 1-8-1999 and till such date the deemed High Tension Tariff will continue. I am afraid the stand cannot be appreciated. As a matter of fact, as can be seen from the report of the Electrical Inspector, as on 8-10-1998 the conversion had already taken effect by segregating certain loads to the generators. Therefore, the petitioner is certainly entitled to have the benefit of the

conversion, in any case, from the actual date of conversion as stated in the report dated 8-10-1998 of the Electrical Inspector. Ext.P9 will stand modified to the above extent making it clear that the benefit of conversion as permitted in Ext.P9 should be available to the petitioner with effect from the date of report of the Electrical Inspector, namely, 8-10-1998. In that view of the matter Ext.P11 is unnecessary and the same is quashed. There will be a direction to the respondents to revise the bills already issued to the petitioner and adjust excess amounts, if any, collected from the petitioner in the future bills. Appropriate action in this regard shall be taken with notice to the petitioner within a period of four months from the date of receipt of a copy of the judgment. The interim order in C.M.P.No.20255/2001 will continue till such time.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.

KURIAN JOSEPH, J.

O.P.NO.12755/2001

JUDGMENT

17th January, 2007